IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8240 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

G S R T C

Versus

GANGAGAR SEJAGAR

Appearance:

Ms.Krina Thakker, with MR YOGESH S LAKHANI,
for the Petitioner.

NOTICE SERVED BY DS for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 25/06/2002

ORAL JUDGEMENT

The petitioner-Corporation has challenged the order passed by the Industrial Tribunal, Bhavnagar, dated 30.3.1995 in Reference (ITR) No.44 of 1993. By the impugned Award, the Labour Court has interfered with the

order of penalty imposed by the Disciplinary Authority and the order of penalty inflicted by the Disciplinary Authority, by which the respondent-workman was subjected to the penalty of reducing his pay scale to minimum, was set aside and, instead, the Tribunal, while exercising the powers under Section 11-A of the Industrial Disputes Act, imposed the penalty of withholding of two increments with future effect. Being dissatisfied by the aforesaid order of the Industrial Tribunal, the S.T. Corporation has approached this Court by way of this petition.

2. The respondent-workman, at the relevant time, was serving as a Conductor and as a Conductor, he was duty bound to collect the fare from the passengers and was expected to be honest and sincere towards his employer in collecting the fare and to deposit the same to his employer, i.e. the S.T. Corporation. On the relevant day, i.e. on 3.8.1982, he was on duty as a Conductor on a bus which was proceeding to Rajula from Jaffrabad and during the course of the journey, the bus was intercepted by the Officer of the S.T. Corporation for the purpose of checking. At that time, it was noticed that the respondent-workman had collected fare from 17 passengers, but, in turn, he had not issued tickets to them. In view of the said incident, he was subjected to a charge-sheet. Subsequently, after concluding the departmental proceedings, the Disciplinary Authority, by its order dated 18.10.1982, passed an order of dismissal against the said workman. The said dismissal order was challenged by the respondent-workman by filing departmental appeal which was also dismissed. Therafter, he carried the matter before the second Appellate Authority of the S.T. Corporation. The second Appellate Authority allowed the said appeal partly and passed an order of reinstating the aforesaid workman to his original post of Conductor and the appellate authority substituted the penalty of the Disciplinary Authority by reinstating the said person on the minimum pay scale. The appellate authority passed the aforesaid order on 6.9.1984. Thereafter, after a considerable period, the respondent-workman raised an Industrial Dispute and, ultimately, the matter was referred to the Industrial Tribunal, which was originally numbered as Reference (ITR) No. 98 of 1988, and remembered as Reference (I.T.R.) No.44 of 1993. The Tribunal, ultimately, as stated above, interfered with the aforesaid punishment order imposed by the second appellate authority of the S.T. Corporation and inflicted penalty of withholding of two increments with future effect.

3. On behalf of the petitioner-Corporation, Ms.

Krina Thakker vehemently argued that the Industrial Tribunal has committed a grave error of law as well as of jurisdiction in interfering with the order of punishment imposed by the appellate authority of the S.T. Corporation. It is submitted by her that the appellate authority itself has taken a very lenient view of the matter as the appellate authority itself has saved the employment of the concerned workman by reinstating him in service. Under the said circumstances, it was not necessary for the Tribunal to again interfere with the said punishment by substituting the penalty imposed by the appellate authority of the Corporation and by reducing the penalty imposed by the appellate authority to withholding of two increments with future effect. It is also submitted by her that it cannot be said that the punishment imposed by the S.T. Corporation is such that it deserves any interference at the hands of the Tribunal by invoking Section 11-A of the I.D. Act. Learned counsel also further submitted that even considering the past record of the concerned workman, which is annexed along with the petition at page 22, even in past, the workman had indulged in seven acts of misconduct of similar type, which are pertaining to the financial irregularity on the part of the respondent-workman and in her submission, the aforesaid record was also made available to the Tribunal. Still, the Tribunal interfered with the ultimate penalty and substituted the penalty imposed by the appellate authority and, therefore, according to her, the order of the Tribunal deserves to be quashed and set aside and that of the appellate authority of the Corporation is required to be restored.

4. As against that, it is submitted by Mr.Rathod, learned Advocate appearing for the Corporation, that since the Tribunal has very wide power to interfere with the penalty order and since the Tribunal has exercised its discretion under Section 11-A of the Industrial Disputes Act, this Court may not interfere with the said order in a petition which is filed under Article 227 of the Constitution of India. Mr.Rathod also further submitted that, in any case, non-issuance of tickets to the passengers after collecting the fare cannot be said to be a very serious misconduct. He also further submitted that the Conductor was about to issue tickets to the passengers when this unfortunate incident of of checking by the Inspection Squad took place and that is why he was found to have committed the aforesaid misconduct. He, therefore, submitted that, in the facts and circumstances of the case, this Court may not entertain this petition and may reject the same and

confirm the order of the Tribunal.

I have heard Advocates of both the sides, in detail. In my view, the Tribunal has exhibited a very casual approach of the matter by passing the impugned Award. So far as the facts of the case are concerned, it is not in dispute that, on the relevant day, after collecting the fare from the 17 passengers, the Conductor had not issued the tickets to the said passengers. The said fact itself is clear that even though money is collected, the tickets were not issued and naturally, therefore, the respondent-workman tried to take undue advantage of the situation by not depositing the said money with his employer, i.e. the S.T. Corporation. The Conductor, who is appointed by the S.T. Corporation, is supposed to collect fare and is required to honestly deposit the said amount, which he gets by way of collecting the fare, to his employer, i.e. the S.T. Corporation. It cannot be said that such type of misconduct is of a casual nature or that such type of lapses should be treated as routine lapses on the part of such Conductors. The respondent-workman was expected to be honest enough to issue tickets to the passengers after collecting the fare and was required to deposit the amount with the Department as he is paid salary for doing the said work. Unfortunately, nowadays, such types of cases are coming day in and day out and this has become the regular feature, wherein conductors are found to have misappropriated the amount by not issuing tickets after collecting the fare. The question, therefore, which requires consideration is whether the Labour Court or the Industrial Tribunal, as the case may be, is expected to exercise powers in such type of cases in a casual manner only. In the instant case, even in the past, the respondent-workman was found to have committed seven similar acts of misconduct and his past record is already available at page 22, Annexure 'C" in the compilation. In some cases, he was found to have committed misconduct of not charging the amount from certain passengers and not issuing tickets to the passengers. In spite of seven cases of similar acts of misconduct in the past, the appellate authority of the S.T. Corporation took a liberal view in order to see that the employment of the respondent-workman is saved and, he was subjected to penalty by placing him in the minimum of pay scale of the Conductor. In spite of the aforesaid factual aspect of the matter, the Industrial Tribunal, in a very routine and casual manner, exercised his powers under Section 11-A of the I.D. Act and even interfered with the said penalty. In my view, therefore, the Industrial Tribunal has, without considering, in detail, the facts and

circumstances of the case and without considering the material on record and even without considering the gravity of the misconduct, which the respondent-workman is found to have committed, has acted in a very mechanical manner as the Tribunal seems to be of the opinion that once there is a Reference, the Tribunal must exercise powers under Section 11-A of the I.D. Act irrespective of the nature of the misconduct which is alleged and proved against such workman. Under the aforesaid circumstances, in my view, the Tribunal has committed a grave error of law and has also exercised its jurisdiction in a very casual manner by interfering with the order of penalty imposed by the appellate authority by substituting the same to withholding of two increments with future effect.

On behalf of the petitioner-Corporation, learned Advocate has relied upon the decision of the Apex Court in U.P. State Road Transport Corpn. and others v. A.K. Parul, AIR 1999 SC 1552, wherein the Apex Court has observed as under :-

> " ... ...
> This Court consistently has taken the view that while exercising judicial review, the Courts shall not normally interfere with the punishment imposed by the authorities and this will be more so when the Court finds the charges were proved. The interference with the punishment on the facts of this case cannot be sustained. In State Bank of India v. Samarendra Kishore Endow (1994) 2 SCC 537 : (1994 AIR SCW 1465), this Court held that imposition of proper punishment is within the discretion and judgment of the disciplinary authority. It may be open to the appellate authority to interfere with it, but not to the High Court or to the Administrative Tribunal for the reasons that the jurisdiction of the Tribunal is similar to the powers of the High Court under Article 226. As noticed earlier, the High Court, having found the charges proved, is not justified in interfering with the punishment imposed by the disciplinary authority, particularly in this case, the respondent was once removed from service on the charge of corruption and again reinstated. On the facts, the interference by the High Court was not at

all justified. Accordingly, the appeal is allowed, the order of the High Court is set aside and the writ petition filed by he respondent in the High Court stands dismissed.

... ... "

Reference is also required to the decision of the Apex Court in Janatha Bazar (South Kanara Central Cooperative Wholesale Stores Ltd.) and others v. Secretary, Sahakari Noukarara Sangha and others, (2000) 7 SCC 517, wherein the Supreme Court held as under :-

" ... ...

6. As stated above, the learned Single Judge and the Division Bench in writ appeals confirmed the findings given by the Labour Court that charges against the workmen for breach of trust and misappropriation of funds entrusted to them for the value mentioned in the charge-sheet had been established. After giving the said findings, in our view, the Labour Court materially erred in setting aside the order passed by the management removing the workmen from service and reinstating them with 25% back wages. Once an act of misappropriation is proved, may be for a small or large amount, there is no question of showing uncalled for sympathy and reinstating the employees in service. Law on this point is well settled (Re : Municipal Committee, Bahadurgarh v. Krishnan Behari). In U.P. SRTC v. Basudeo Chaudhary, this Court set aside the judgment passed by the High Court in a case where a conductor serving with U.P. State Road Transport Corporation was removed from service on the ground that the alleged misconduct of the conductor was an attempt to cause loss of Rs.65 to the Corporation by issuing tickets to 23 passengers for a sum of Rs.2.35 but recovering @ Rs.5.35 per head and also by making entry in the waybill as having received the amount of Rs.2.35,whcih figure was subsequently altered to Rs.2.85. The Court held that it was not possible to say that the

Corporation removing the conductor from service has imposed a punishment which is disproportionate to his misconduct. Similarly in Punjab Dairy Development Corpn. Ltd. v. Kala Singh this Court considered the case of a workman who was working as a Dairy Helper-cum-Cleaner for collecting milk from various centres and was charged for the misconduct that he inflated the quantum of milk supplies in the milk centres and also inflated the quality of fat contents where there were less fat contents. The Court held (at SCC pp. 161-62, para 4) that in view of the proof of misconduct a necessary consequence will be that the management had lost confidence that the workman would truthfully and faithfully carry on his duties and consequently the Labour Court rightly declined to exercise the power under Section 11-A of the ID Act to grant relief with minor penalty.

7. In view of the aforesaid settled legal position, the High Court materially erred in confirming the directions given by the Labour Court in reinstating the respondent workmen with 25% back wages. For giving the aforesaid direction, the Labour Court considered that there is no evidence regarding past misconduct by the employees and, therefore, it can be observed that they have rendered several years of service without any blemish and to some extent, there was lapse on the part of the management.

8. In case of proved misappropriation, in our view, there is no question of considering past record. It is the discretion of the employer to consider the same in appropriate cases, but the Labour Court cannot substitute the penalty imposed by the employer in such cases.

... ..."

In Karnataka State Road Transport Corpn. v. B.S. Hullikatti, (2001) 2 SCC 574, the Apex Court held as under :-

" ... ...

5. On the facts as found by the Labour

Court and the High Court, it is evident that there was short-changing of the fare by the respondent from as many as 35 passengers. We are informed tat the respondent had been in service as a Conductor for nearly 22 years. It is difficult to believe that he did not know what was the correct fare which was to be charged. Furthermore, the appellant had during the disciplinary proceedings taken into account the fact that the respondent had been found guilty on as many as 36 times on different dates. Be that as it may, the principle of res ipsa loquitur, namely, the facts speak for themselves, is clearly applicable in the instant case. Charging 50 paise per ticket more from as many as 35 passengers could only be to get financial benefit, by the Conductor. This act was either dishonest or was so grossly negligent that the respondent was not fit to be retained as a Conductor because such action or inaction of his is bound to result in financial loss to the appellant Corporation.

6. It is misplaced sympathy by the Labour Courts in such cases when on checking it is found that the Bus Conductors have either not issued tickets to a large number of passengers, though they should have, or have issued tickets, of a lower denomination knowing fully well the correct fare to be charged. It is the responsibility of the Bus Conductors to collect the correct fare from the passengers and deposit the same with the company. They act in a fiduciary capacity and it would be a case of gross misconduct if knowingly they do not collect any fare or the correct amount of fare.

7. In our opinion, the order of dismissal should not have been set aside, but we are informed that in the meantime the respondent has already superannuated. We, therefore, on the special facts of this case, do not set aside the roder of reinstatement, but direct that the respondent would not be entitled to any back wages at all but he would be entitled

to the retiral benefits.

... ..."

In view of the aforesaid pronouncement of law by the Apex Court, in my view, the order of the Tribunal deserves to be set aside.

So far as the argument of Mr.Rathod that since the Tribunal has exercised powers under Section 11-A of the I.D. Act, this Court cannot exercise its powers under Article 226 of the Constitution of India, I do not find any substance in the said argument firstly because, in my view, this is not a case in which it can ever be said that the punishment imposed by the Disciplinary Authority / Appellate Authority is so disproportionate to the gravity of the offence committed by the workman, which requires any interference at the hands of the Tribunal under Section 11-A of the I.D. Act. So far as Section 11-A is concerned, the powers under the same are required to be exercised when the Labour Court or the Industrial Tribunal, as the case may be, is of the opinion that the penalty is so disproportionate to the gravity of misconduct. As a matter of fact, in a case where an employee is found to have committed misappropriation of the funds of the employer and if such misconduct is found to have been proved, there is no scope of applying Section 11-A. Even otherwise, one can understand if the said provision is applied by the Court in a case where an employee is found to have committed misconduct, which is not of a serious nature and if employment of the concerned workman is taken away even if the misconduct is of a trivial nature. In such cases, naturally, the Court can certainly resort to the said provision, but, in a case where there is a serious misconduct, such provision cannot be applied in a routine manner simply on the basis that by the so-called impugned action, the concerned workman will be losing his employment. It is, expected, therefore, from the Labour Court or the Industrial Tribunal, as the case may be, that the powers under Section 11-A of the I.D. Act are required to be exercised in a proper manner and it is not required to be used in a routine manner and before applying such provision, appropriate reasoning is required to be given. Now, unfortunately it is found in various cases that such powers are exercised in a very casual and routine manner, with the result that even in a case, after appropriate enquiry, when a serious misconduct is proved, yet, the provision is applied as a matter of course. It is expected that while exercising the powers, appropriate care will be taken by the Labour

Court or the Industrial Tribunal so that there may not be any miscarriage of justice. Sympathy and mercy is required to be shown to a workman, who deserves the same. The facts of the present case indicate that a person, who is found to have committed acts of misconduct of similar type seven times in the past, was, ultimately, even dealt with leniently by the Department itself; yet, the Tribunal interfered with the penalty order and passed the impugned order. It is shocking that even in such cases, the Tribunal has interfered with the penalty by substituting the same. The Tribunal has acted as if the Tribunal itself is a third appellate authority of the S.T. Corporation. It is also shocking that the Tribunal has also believed that even in the past, the workman has not issued tickets, but there is nothing to show that after taking money, he has not issued tickets. The Tribunal should have appreciated that the respondent-workman was appointed as a Conductor and his main duty is to issue tickets to the passengers so that his employer, i.e. the S.T. Corporation, is not put to monetary loss.

Under the aforesaid circumstances and considering the fact that the appellate authority of the Corporation itself has reinstated the respondent-workman in service by imposing penalty of putting him to minimum pay scale, in my view, no interference with the said penalty was called for at the hands of the Tribunal. Exercise of powers under Section 11-A of the I.D. Act, in the present case, is absolutely misplaced and uncalled for. Even otherwise, after a period of four years from the date of the order of the appellate authority and that too, after getting the benefit of reinstatement, the concerned workman raised the aforesaid industrial dispute in the year 1988. Even on that ground also, no relief was required to be given to the concerned workman. Unfortunately, the Tribunal has not considered the aforesaid case from the aforesaid angle and has accordingly committed a serious error of law as well as of jurisdiction by interfering with the order of the disciplinary authority by exercising powers under Section 11-A of the I.D. Act, which was not required to be exercised in the facts and circumstances of the case. In that view of the matter, the order of the Tribunal is quashed and set aside and the order passed by the appellate authority of the petitioner-Corporation and the penalty order passed by the appellate authority of the petitioner-Corporation is restored. Rule is accordingly made absolute, with no order as to costs.

(P.B. Majmudar, J.)

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(apj)